DOCUMENT RESUME

ED 097 676 CS 201 578

AUTHOR Siebert, Fred S.
TITLE Some Legal Problems of Satellite Transmission.
PUB DATE Aug 74
NOTE 8p.; Paper presented at the Annual Meeting of the Association for Education in Journalism (57th, San Diego, California, August 18-21, 1974)

EDRS PRICE MF-$0.75 HC-$1.50 PLUS POSTAGE
DESCRIPTORS Broadcast Industry; Communication (Thought Transfer); *Communication Satellites; *Foreign Relations; Higher Education; International Law; *Legal Problems; Propaganda; *Telecommunication

ABSTRACT

Now that the technical aspects of satellite transmission have been solved, there remain the more complex and difficult problems of maintaining both order in outer space and the rights of nations and individuals as these rights may be affected by broadcasts transmitted by satellite stations. These broadcasts, whether beamed to a ground station or to a home receiver, raise a host of legal problems involving the rights of the program originators, the rights of sovereign states into whose territory the signal may penetrate, and the rights of individuals which may be infringed by these broadcasts. International law has not caught up with the development of satellite transmission. A number of international organizations are looking into the legal problems arising from satellite transmission, but no draft conventions covering the problems of broadcasters have yet been adopted. On the domestic level, the United States still faces a number of complex policy questions in the utilization of satellites. (RB)

U.S. DEPARTMENT OF HEALTH
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

BEST COPY AVAILABLE

ED 097673

Some Legal Problems of Satellite Transmission

Fred S. Siebert

Michigan State University

(An invited paper to be presented at a joint session on International Broadcasting sponsored by the International Communication and Radio-TV Divisions, AEJ, San Diego State University, August 18, 1974)

I

As Sig Mickelson has just pointed out, "the Satellite era has just begun." Now that the technical aspects of such transmission have been solved, there remain the more complex and difficult problems of maintaining order in outer space and also the problems of the rights of nations as well as of individuals as these rights may be affected by broadcasts transmitted by satellite stations.

And now that the ATS-6 (Applications Technology Satellite) has been launched from Cape Canaveral, we have what is described as "the most versatile, powerful, and unique communications spacecraft ever developed." With a converter and a simple antenna, costing about $3000, an ordinary TV set can receive its signals. And the next step--not too far off-will be a satellite transmitter powerful enough to be received by an ordinary TV set without a converter.

These broadcasts, whether beamed to a ground station or to a home receiver, raise a host of legal problems involving the rights of the program originators, the rights of sovereign states into whose territory the signal may penetrate, and the rights of individuals which may be infringed by these broadcasts.

At once we become involved in the differences between the domestic law of different nations as well as the differences between domestic law and international law. For instance, the rights protected in India may be materially different from the rights protected in the United States.

CS 201 578

International law has not caught up with the development of satellite transmission. International law is at best a series of mutilateral or unilateral treaties, negotiated by diplomats and ratified by the various sovereign governments. These agreements are enforcible by individual states or by international sanctions. A country whose rights have been invaded or whose citizens rights have been infringed can appeal for redress to the offending country, but if that country refuses to act, there is very little that the injured party can do.

A number of international organizations have looked into the legal problems arising from satellite transmission, but no draft conventions covering the problems of these broadcasts have yet been adopted, let alone submitted for ratification. As has been pointed out, "Talk in international assemblies is followed by plans to study the problems, which lead to more talk, which ends in the decision to seek more study."

C. M. Daffen, legal advisor to the Department of Communications of Canada has described the situation: "Overwhelmed by the vision, frightened by the dangers, and unwilling to make commitments, statesmen scramble, snail-like back into their respective foreign office shells, where they can catch their breath and prepare snail-like strategies; strategies based on what each has to fear and what each stands to lose with the advent of the new medium."

The differences in political ideology, in internal governmental structure, and in domestic laws is strikingly evident in the opposing attitudes of the Soviet Union and the United States toward the problems of satellite transmission. These two countries are the only ones at present which have the facilities for launching satellites. And it becomes obvious that the transmissions from these satellites are bound to become involved in propagating the ideology of the country of origin unless some kind of internaticnal understanding can be reached.

On August 8, 1972, Andrei Gromyka submitted a draft convention on "transmission of television programs to home television viewers." These programs, in the terms of the draft should be "in the interests of peace, progress, the development of mutual understanding and the strengthening of friendly relations between peoples."

Excluded from such programming would be "Any material publicizing the ideas of war, militarism, nazism, national or racial hatred and enmity between peroples as well as material which is immoral or instigating in nature or is otherwise aimed at interfering in the domestic affairs or foreign policy of other states."

Query--would the adoption of this provision prohibit the showing of national flags, of bikinis at a seaside resort, or of a May Day parade?

In addition the Soviet Union has incorporated a provision which would make it illegal for any country to set up a profit-making organization in connection with satellite transmission. In the United States COMSAT is a capitalistic and profit-making organization, and many of its customers, such as ITT and AT&T are also profit-making organizations.

II

On the domestic level, the United States still faces a number of complex policy questions in the utilization of satellites. For example, who gets to use the domestic satellite and on what terms. Should a satellite be leased to the American Telephone and Telegraph Company for its exclusive use in transmitting messages? Or should the networks be allocated a use for both national and international broadcasting? Or should the Ford Foundation be assigned the use of a satellite primarily for educational purposes? These policy problems remain to be solved. In both India and Canada the uses to which a domestic satellite should be put apparently have been assigned so that these countries are ready for domestic satellite transmission. In the

United States we still face the problem of one system versus several specialized systems.

An equally serious problem is the determination of what federal agency shall have the authority to regulate the use of a domestic satellite in the United States. Apparently the Federal Communications Commission would have authority to regulate satellite use under the Satellite Act and also under the Federal Communications Act.

Not all policy questions in this area are legal questions; however all legal questions are also to some extent policy questions. A central legal question is: What control does a sovereign state have over signals transmitted to its territory by satellite? Even though a signal may not be beamed to a particular state, there is always the possibility of a spill-over, particularly where the states have a small territory as in Europe and Africa. Many of the countries of the world fear that "cultural imperialism" transmitted from the wealthy and powerful states will submerge their own native cultures. Another fear is that reconnaissance satellites will be able to identify and pin-point military installations.

Among the possible methods of legal control over undesirable signals is through the domestic control of receivers. This method is not too difficult to administer where the satellite signal is received by a ground station and re-transmitted to local receivers. Russia now has 25 satellites in orbit with 35 ground receiving stations. A more complicated problem arises when the transmission is from a satellite capable of sending its signals directly to domestic receivers. At the present time those receivers must have a special converter and antenna, both of which can be controlled by a sovereign state. A still further method of control is by jamming the signal, a method which has been used to protect a country from unwanted radio signals.

A further method which a country can use to protect its citizens is by adhering

to an international convention treaty by which the members agree to refrain from broadcasting material which would be illegal in the receiving country. Enforcement would depend on the willingness of the transmitting nation to abide by the convention and also by invoking the sanctions of international law. The International Telecommunications has been mentioned as possible organization to undertake this assignment. However the ITU has been concerned almost exclusively with allocation of the radio spectrum for various types of services and has not been involved in the content of messages/nor in the allocation of outer space.

III

On the opposite side of the coin, what legal methods are available for the protection of property rights in the materials transmitted by satellite across national boundaries?

What are the rights which require such protection? They are all the rights which currently are protected by domestic copyright law and by international copyright agreements. For example what right does a composer of music have over the unauthorized recording and sale of his music taken off a satellite transmission. The same goes for authors of educational materials. What rights does a performer or artist have against the reuse of his performance? How can the broadcast networks protect their programs from being pirated by countries which do not pay for the use of such programs? How can a sports promoter protect his international broadcast rights in a sports event?

The principal international copyright organizations are the Berne Convention with 63 member countries and the Universal Copyright Convention with 66 members, with 40 countries belonging to both. In addition there is the World Intellectual Property Organization (WIPO) which is currently working on the problems of international protection of rights in satellite distribution.

A further complication is that the domestic copyright laws differ widely in the degree of protection which they offer. For example, performance rights are not recognized by the United States but are protected under the Rome Convention in 14 states. Recordings or phonograms are not protected as such in the United States but are protected by the Phonogram Convention in 7 states.

The Third Committee of Governmental Experts of the United Nations met in Nairobi in July 1973 to attempt to draft a "Convention Relating to the Distribution of Program-carrying signals Transmitted by Satellite." The discussions centered around the question of whether (1) to protect the broadcasting organizations, or (2) to protect contributor's rights to control transmission. The final conclusion was to limit the discussion to current events programs, without any consideration of authors' or artists' rights. The text of the draft convention has been published in the EBU Review, Vol XXI, No. 5, September 1973.

An additional protection problem has been raised by the so-called under-developed countries, which are contending that they should be able to receive programs, especially educational programs transmitted by satellite without payment of copyright royalties.

A particularly sticky problem is the protection of computer programs transmitted by satellites. It is my understanding that IBM has agreed to give Canada free use of its programs but is attempting to protect them in the United States.

The European Broadcasting Union (EBU) might serve as a model for other regional organizations and perhaps also for a world organization. All the countries of western Europe including Yugoslavia are members of the EBU. If an American network or sports organization wishes to distribute its programs in Europe, it can make arrangements with the EBU which will supervise the distribution and also protect the property interests of the program originator. A similar regional organization has been

planned for Central and South America.

IV

Two remaining legal problems resulting from satellite transmissions are (1) what legal protection does an individual have for the protection of his personal rights which have been infringed by a world-wide satellite transmission, and (2) what legal protection does a sovereign state have against the dissemination of seditious or subversive material.

A individual who feels his reputation has been defamed or his privacy invaded by satellite distribution is at present limited to bringing legal action in those countries in which he believes he has been defamed. The domestic law of the country or countries in which suit is brought would be applied. No international convention has yet been drafted or proposed to protect the rights of an individual to his reputation or privacy.

A more complex problem is how does a state protect itself from seditious or subversive broadcasts. Practically every nation in the world, including the United States, have laws making it a crime to disseminate seditious material. The definition of "seditious" will vary from state to state but normally it means material which advocates or seeks to overthrow the existing government. Many states in the world are particularly sensitive on this score. Anyone who makes a speech which urges the overthrow of an established government and which is transmitted by satellite can be arrested and tried under the laws of that government if he can be found within the territory of that government.

However, if he is outside the territorial jurisdiction of the attacked government, there is little that that government can do except request his extradition through diplomatic channels. No international convention or treaty has provisions for control

of seditious or subversive material in broadcast programs.

I am aware that I have presented briefly a number of complex legal problems arising from satellite distribution without at the same time presenting any very viable solutions. However, the first step is to identify and define the problems.